HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 7232 of 1997

DATED: 24-01-2007

Between:

M/s Visakhapatnam Steel Plant, rep. by its
General Manager (Personnel),
Sri C.Appa Rao

...Petitioner

and

The Hon'ble Industrial Tribunal-cum-
Labour Court, Visakhapatnam and others.

...Respondents.

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 7232 of 1997

ORAL ORDER:

The Visakhapatnam Steel Plant has filed this writ petition aggrieved by the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam (for short 'the Labour Court'), dated 8-1-1997 in I.D.No. 17 of 1993.

The 2nd respondent herein submitted a dispute for resolution to the Industrial Tribunal, under Section 2A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') against the petitioner. Initially, the 2nd respondent preferred a complaint before the Labour Court as one under "Section 12 of the Consumer Disputes Act". The Labour Court entertained the complaint under Section 2A (2) of the Act.

The specific complaint of the 2nd respondent was that he was selected as a casual Kalasi in the petitioner's Steel Plant on 23-8-1990 and despite several representations including a lawyer's notice, no orders of appointment were issued. The 2nd respondent also informed the Employment Exchange, Visakhapatnam that he had obtained employment in the Steel Plant. Relief was claimed for an award appointing him as a Kalasi in the respondents-organization with effect from 4-9-1990 and for the back wages. It is not the 2nd respondent's case that he was appointed as a workman for a time and was thereafter discharged, dismissed, retrenched or otherwise terminated.

By the award impugned in this writ petition, the

Labour Court concluded that as the dispute relates to the non-employment of the 2nd respondent with the writ petitioner, it is an Industrial Dispute and it has the jurisdiction. On merits, the Labour Court held that the 2nd respondent was selected by the writ petitioner as a Kalasi in the selections held in August, 1990 and consequently directed, the petitioner to issue an appointment to the 2nd respondent with effect from 4-9-1990 with continuity of service but without back wages and to pay him compensation of Rs.10,000/- in lieu of back wages.

Sri Ravinder Rao, learned counsel for the writ petitioner impeaches the jurisdiction of the Labour Court to entertain and determine the 2nd respondent's grievance under Section 2A(2) of the Act. Sri Ravinder Rao would also submit on the merits of the Labour Court's determination to impeach the conclusions by the Labour Court on the issue as to the 2nd respondent having been selected for appointment as a Kalasi. The consideration of the Labour Court's decision (on the merits of the 2nd respondent's claim that he had been selected for appointment as the Kalasi) must be considered only if the writ petitioner's main contention as to the jurisdictional incompetence of the Labour Court, is rejected by this Court. If this Court is satisfied that the Labour Court had no jurisdiction, it would not be necessary to examine whether its decision on the merits of the 2nd respondent's claim is correct.

Section 2 (k) of the Act defines "Industrial Dispute" to mean any dispute or difference between employers and employees or between Employers and Workmen, or

between Workmen and Workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. Section 2A was inserted by Central Act 35 of 1965 with effect from 1-12-1965 whereby a discharge, dismissal, retrenchment or otherwise termination of the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute. Individual dispute pertaining to discharge, dismissal, retrenchment or otherwise termination of the services of an individual workman, has thus been legislatively deemed to be an industrial dispute, expanding the definition of industrial dispute qua Section 2K.

Section 10 of the Act mandates that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, as the case may be, direct the presentation of an industrial dispute (including a dispute or grievance relating to discharge, retrenchment or other mode of termination) to a Labour Court or a Tribunal as envisaged under the Act. The dispute would have to be referred by the appropriate Government.

Sub-section (2) has been inserted in Section 2A of

the Act by the Andhra Pradesh Amendment Act 32 of 1987, with effect from 27-7-1987.

As per Section 2A (2) of the Act, notwithstanding anything in section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act, and all the provisions of the Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute.

Section 2A (2) of the Act carves out an exception to the normative method of adjudication of a dispute by the Labour Court or the Industrial Tribunal, namely, only on a reference by the appropriate Government. Section 2A (2) of the Act applies and therefore, confers jurisdiction on the Labour Court only in respect of disputes relating to the discharge, dismissal, retrenchment or other termination of an individual workman by an employer. A claim for employment is not within the text or the context of Section 2A (2) of the Act. The Labour Court or the Industrial Tribunal are the Tribunals of limited jurisdiction, creatures of a legislative disposition. The jurisdiction, power and authority of such institutions is subject to the legislative grant. Where the legislature has expressly conferred power on a Tribunal of limited jurisdiction to adjudicate upon an issue/a dispute or a grievance only in a specified context and by specified

procedure viz., reference by the Government, qua Section 10 of the Act, the jurisdiction of the Labour Court would not extend to either suo motu or on a direct application (without a reference by the appropriate Government) to take up or adjudicate an industrial dispute or a grievance.

Since the grievance of the 2nd respondent herein is not an industrial dispute within the meaning of expression in Section 2A of the Act, it is not a dispute which may be directly presented to the Labour Court by a workman, for adjudication. As a corollary of this premise, this Court is of the opinion that under Section 2A(2) of the Act, the Labour Court has no jurisdiction to entertain a dispute directly presented to it by the 2nd respondent claiming employment and not complaining of either discharge, dismissal, retrenchment or other termination.

On the aforesaid analysis, the impugned award passed by the Labour Court is patently without jurisdiction, is unsustainable and is accordingly set aside.

The writ petition is allowed. There shall be no order as to costs.

Nothing in this Judgment shall disable the 2nd respondent to pursue appropriate remedies available in law.

GODA RAGHURAM, J

24-01-2007

GRR